JUMILAH ALI

v.

BAKAR NOORDIN & ORS.

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[ORIGINATING SUMMONS NO. 24-429-1990]
11 OCTOBER 1990

LAND LAW: *Recovery of possession of land - Whether defendant had licence and consent of owner - Relevant factor - Order 89 Rules of the High Court 1980.*

On 10 April 1989, the plaintiff J executed a sale and purchase agreement for the purchase of the said land from C. J was duly registered as the owner. On the said land, there is a house bearing No. 149, adjoining this house is the illegal structure occupied by D.

J commenced proceedings for the recovery of possession of the said land under O. 89 of the Rules of the High Court 1980 (RHC) claiming that D occupied the illegal structure without the licence or consent of J or her predecessors in title. Both the 1st and 2nd defendants, D1 and D2 contend that they are tenants of the illegal structure and have paid monthly rental to one A who they claim to be the lawful tenant of No. 149 - this is supported by A.

Held:

[1] D1 and D2's claim that they are A's tenants paying a monthly rental of RM300 month does not affect the right of P as the new proprietor of the said land *vis-a-vis* a licensee or a trespasser.

[2] A's claim that he is the licensee of house No. 149 does not help D1 and D2; his claim may be an issue in the related case between him and J and the Court is not concerned with his defence of equitable estoppel.

[3] In this case, the occupation of the said structure by D has been without any consent of J or C.

[Plaintiff's application granted.]

Legislation referred to:
Rules of the High Court 1980, O. 89, r. 1, 6

Other sources referred to:
White Book, 1985 Edn.
Land Lord and Tenant by Lye Lin Heng, p. 22

For the Plaintiff - Abu Haniffah (N. Jayabalan with him); M/s. J. Balan & Co.
For the Defendants - S.P. Annamalai; M/s. Annamalai & Co.

[**Editor's Note:** The defendants have lodged an appeal to the Supreme Court.]

JUDGMENT

Mohamed Dzaiddin J:

This is an application by the plaintiff for recovery of possession of part of land known as Lot No. 14 seksyen 14, Bandar Batu Ferringgi, Daerah Timur Laut, Pulau Pinang ("the said land") upon which is situated an illegal structure occupied by the defendants without the plaintiff's licence or consent or her predecessor-in-title.

The defendants are presently carrying on business on the said premises under the name and style of "Macy's Silk Palace" and "Bakar-Rent-A-Car and Motorcycle".

Briefly, the facts as gathered from the affidavits of the parties are as follows. On 10 April 1989, the plaintiff executed a sale and purchase agreement with the former owner, Encik Chan Seang Teik to buy the said land free from encumbrances at a price of RM130,000 and was duly registered as the owner on 16 November 1989. There is a house bearing No. 149, Jalan Batu Ferringi remaining on the said land and adjoining the said house is the illegal structure occupied by the defendants. The plaintiff stated that neither she nor the previous owner had given permission to anyone to occupy the said land. Encik Chan affirmed an affidavit in support of the plaintiff's application on 15 June 1990 (lampiran 2). He deposed that the said land was purchased by him from a lady, Parvathy Amal on 28 March 1958 and the house bearing No. 149 was then occupied by one Chik bt. Ali, who was aware of the sale. There were no other structures on the said land. Encik Chan further deposed that he allowed Chik to remain on the said land and to occupy house No. 149 rent-free on condition that she and other occupants vacated it whenever he required it back. Later, between November and December 1987, he came to know that an illegal structure was built near the said house without his consent. He met the occupant of house No. 149, one Amzah and requested him to demolish the said illegal structure immediately. As Amzah did not obey his request, Encik Chan instructed his solicitors, Chang & Vello to issue a notice to act demanding Amzah to forthwith demolish the illegal structure on the said land. See CST2. About seven months later, another solicitor, Geh Cheng Lok & Co. wrote to the Secretary, Majlis Perbandaran Pulau Pinang requesting the Council to take stern action against the occupants of the illegal structure.

Both the 1st and 2nd defendants opposed this application. They denied that they are trespassers and contended that they are tenants of the said illegal structures having paid and continued to pay monthly rental of RM300 to one Amzah bin Nayam, who they claimed to be the lawful tenant of premise No. 149 Jalan Batu Ferringgi. Such a claim is supported by Amzah himself in his affidavit affirmed on 21 September 1990 (lampiran 7). Amzah deposed that he is the owner and occupant of house No. 149, which he occupied with his sister Ramlah bte. Saad since the death of his mother Chik bte. M. Ali on 23 March 1977. According to him, the said house was built by his grandfather, Mat Ali about 60 years ago. He believed that the old man was paying a ground rent of RM3 per month to the former owner of the land, an Indian lady. Further Amzah claimed that he carried on business with the 1st defendant on the said structure since 1984 which was built by him in 1980.

It is settled law that an application under O. 89 Rules of the High Court 1980 must be narrowed to only a claim for recovery of possession of land. According to the *White Book*, 1985 Edn., the scope of O. 113 (in *pari materia* with our O. 89) is to provide a new procedure for the recovery of possession of land which is in wrongful occupation by trespassers. Clearly, under O. 89 r. 1 RHC the rule is confined only to the claim for possession of land which is occupied by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or any predecessor of his. Thus, after considering this originating summons, I am satisfied that the plaintiff is entitled to bring this action under O. 89.

After considering the opposing affidavits and the written submissions of Counsel, based on the facts before me, in my judgment, the defendants had entered into occupation of the illegal structure of the plaintiff's land without her licence or consent and for remaining therein without the licence or consent of the plaintiff or the former tenant, Encik Chan Seang Teik.

The defendants' claim that they are tenants of Amzah paying a monthly rental of RM300 in respect of the said structure does not affect the right of the plaintiff as the new proprietor of the said land *vis-a-vis* a licensee or a trespasser. The supporting affidavit of Amzah deposing that he is the licensee of house No. 149 does not help the defendants either. His claim may be an issue in the related case between him and the plaintiff and the Court is not concerned with his colourable defence of equitable estoppel. Notwithstanding this issue being raised by Amzah on behalf of the defendants, I find there are no other issues which merit further consideration. It is a clear-cut case whether the defendants are licensees of the plaintiff or trespassers of the said land. In the instant case, I am satisfied that the occupation of the said structure by the defendants has been without any consent of the plaintiff or Encik Chan. In the result I grant the plaintiff's application and order that the plaintiff do recover possession of the structure situated on the said land in accordance with O. 89 r. 6.

Also found at [1991] 1 CLJ 126